

UNITED STATES OF AMERICA,

Plaintiff,

v.

CONOCOPHILLIPS COMPANY

Defendant.

Civil Action No.

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”) files this Complaint and alleges as follows:

1

JURISDICTION AND VENUE

2. This court has subject matter jurisdiction over this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and under 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this judicial district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b), because this is the district where ConocoPhillips is located and in which the alleged violations occurred.

4. Notice of the commencement of this action has been given to the State of Texas in accordance with Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

THE PARTIES

5. Plaintiff is the United States of America.

6. Defendant ConocoPhillips Company is a corporation organized under the laws of the State of Delaware and does business in the State of Texas. Defendant owns and operates an oil refinery and petrochemical complex in Old Ocean, Texas, at which the alleged violations occurred.

7. Defendant is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), that owns and operates a treatment facility for wastewater generated in the course of its operations at in Old Ocean, Texas.

STATUTORY AND REGULATORY PROVISIONS

8. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant except as authorized by, and in compliance with, certain enumerated sections of the CWA, including Section 402 of the CWA, 33 U.S.C. § 1342.

9. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge

of a pollutant” as: “[A]ny addition of any pollutant to navigable waters from any point source”

10. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term “pollutant” to include sewage, biological materials, heat, industrial waste and chemical waste discharged into water.

11. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as the waters of the United States, including the territorial seas.

12. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” as any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants may be discharged.

13. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator may issue a permit, termed a National Pollutant Discharge Elimination System (“NPDES”) permit, that authorizes the discharge of pollutants, upon the condition that such discharge will meet the requirements of the CWA or other requirements that the Administrator may find are necessary.

14. Pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, the Administrator is authorized to specify effluent limitations in NPDES permits. Effluent limitations include, but are not limited to, restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11).

15. Pursuant to 40 C.F.R. § 122.41(e), promulgated under the CWA, a standard condition in all NPDES permits states that the permittee shall at all times properly operate and

maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.

16. Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, and 40 C.F.R. § 122.41(l), the Administrator requires the holder of a NPDES permit to monitor and report the pollutant levels in its discharged wastewater. Such reports are referred to as Discharge Monitoring Reports (“DMRs”) and are required to be submitted to the EPA according to the time intervals specified in the NPDES permit.

17. Pursuant to 40 C.F.R. § 122.41(l), promulgated under the CWA, a standard condition of all NPDES permits requires that the permit holder report to the EPA any non-compliance that may endanger health or the environment.

18. Pursuant to 40 C.F.R. § 122.41 (k)(1) and 40 C.F.R. § 122.22 (3)(a) and (b), promulgated under the CWA, a standard condition of all NPDES permits requires that all DMRs and non-compliance reports submitted to the Administrator be signed by a responsible executor or authorized agent of the organization that controls the point source -- who certifies that the reports are accurate.

GENERAL ALLEGATIONS

19. Since at least 1989 to the present, Defendant, or its predecessor in interest, has owned and operated an oil refinery and petrochemical complex which is located at the intersection of Highway 35 and FM 524, in the city of Old Ocean, Texas (hereinafter the “Sweeney Refinery”).

20. The Sweeney Refinery is a facility with primary operations including crude oil refining, natural gas liquids processing, petrochemical production, and associated storage and

utility services.

21. Since at least 1989, Defendant, or its predecessor in interest, has owned and operated a wastewater treatment facility at the Sweeney Refinery, and is, therefore, an “owner or operator” of a “facility” within the meaning of 40 C.F.R. § 122.2.

22. From at least 1989 to the present, the Sweeney Refinery discharged storm water runoff and wastewater from its operations into waters of the United States, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

23. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA issued to Defendant NPDES Permit No. TX0007536 (hereinafter “the Permit”) which became effective October 30, 1989.

24. The Permit authorized the discharge from the Sweeney Refinery of specified qualities and quantities of effluent to receiving waters, including: Linnville Bayou (Outfall 001), Armstrong Lake (Outfall 003), and the San Bernard River (Outfall 005) in Segment No. 1301 of the Brazos-Colorado Coastal Basin, all of which are waters of the United States, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2..

25. The outfalls identified above in Paragraph 25 are “point sources” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

26. The wastewater treatment facility is a “point source” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

27. Parts III.C and III.D of the Permit required Defendant to sample and test its effluent and monitor its compliance with Permit conditions according to specific procedures in order to determine the Facility’s compliance or noncompliance with the Permit and regulations.

These sections also required Defendant to file with EPA on a monthly basis certified Discharge Monitoring Reports (“DMRs”) of the results of monitoring, and Noncompliance Reports when appropriate.

28. Part I.A of the Permit placed certain limitations on the quantity and quality of effluent discharged by Defendant, including numerical limitations governing daily minimum and maximum limits and daily or monthly average amounts of the effluent characteristics for specified pollutants at specified outfalls, including, inter alia, Whole Effluent Toxicity (“WET”), Total Suspended Solids (“TSS”), Biochemical Oxygen Demand (“BOD”), oil/grease, pH and temperature.

29. On April 6, 2004, Texas issued to Defendant Texas Pollutant Discharge Elimination System Permit No. 00721 (the “TPDES Permit”), which supersedes and replaces the Permit that was in effect at the time of the violations alleged in this action. The TPDES Permit provides, in part, that Defendant will discharge treated effluent through a new outfall – Outfall 011 – and must cease discharges of treated effluent through Outfall 001.

30. Upon information and belief, in January 2004, Defendant completed construction of a treated wastewater pipeline that terminates at Outfall 011 on the Brazos River Tidal Segment of the Brazos River Basin.

31. Upon information and belief, Defendant commenced discharging treated wastewater from the Sweeney Refinery through Outfall 011 on April 15, 2004, and ceased discharging from Outfall 001 on April 20, 2004.

CLAIM FOR RELIEF

32. Paragraphs 1-31 are realleged and incorporated herein by reference.

33. During the period from at least 1997 through April 2004, pursuant to the requirements of the Permit, Defendant submitted to the EPA and to the State of Texas certified DMRs that contained the results of Defendant's analysis of its discharges from the Sweeney Refinery facility. These monthly DMRs show that, on over 300 occasions during the period from at least 1997 through April 20, 2004, Defendant discharged pollutants into waters of the United States in violation of effluent limitations for various parameters in its Permit, including WET, TSS, BOD, oil/grease, pH or temperature. Violations of limits for WET, BOD, pH, temperature, TSS and oil/grease occurred at Outfall 001. Violations of limits for TOC and pH occurred at Outfalls 005. Violations of limits for pH occurred at Outfall 003.

34. Each day of Defendant's discharge of each pollutant in excess or in violation of the effluent limits authorized in the Permit constitutes a separate violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

35. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for injunctive relief and civil penalties whenever any person has violated Section 301 of the CWA, 33 U.S.C. § 1311, or has violated any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

36. Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Defendant is subject to a civil penalty not to exceed \$27,500 for each day of each violation of its Permit and the CWA occurring after January 30, 1997 through March 15, 2004, and not to exceed \$32,500 for each day of such violation occurring after March 15, 2004.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that the Court:

1. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, enjoin Defendant from any further violations of the CWA, by ordering compliance with the CWA and its new TPDES Permit;
2. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, assess civil penalties against Defendant for violations of the CWA, as permitted by law, up to the date of judgment herein; and
3. Award such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

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